IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CRIMINAL APPEAL NO. 169/1985
(STATE VS GANGA RAM)

J U D G M E N T

APPEAL UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 28.11.1984 PASSED BY THE LEARNED SESSIONS JUDGE, MERTA IN SESSIONS CASE NO. 51/1983

DATE OF JUDGMENT : 24th September, 2007

HON'BLE MR. BHAGWATI PRASAD, J.
HON'BLE MR. MUNISHWAR NATH BHANDARI, J.

Mr. JPS Choudhary for the State.
Mr. Doongar Singh for the respondents.

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BY THE COURT :

The present appeal has been filed by the State of Rajasthan being aggrieved by the decision of the Court of Sessions Judge, Merta in Sessions Case No. 51/83 dated 28.11.84.

The prosecution was launched with the lodging of the First Information Report by Ramkaran at Police Station, Merta Road on 08.08.83 at 6:15 P.M. stating inter alia that at about 1 PM, the complainant Bhinya Ram S/o Chhoga Ram, Chhoga Ram S/o Dhula Ram were going from village Butati to bus stand Butati. Chhoga Ram was ahead of them by 70-

80 pawandas and the compainant Ram Karan and Bhinya Ram were following him. There was a distance of 70-80 pawandas between them. While they were proceeding towards the bus-stand, accused Ganga Ram, Chhoga Ram, Bhola Ram, Movna Ram came with lathis and clubs and caused injuries to the deceased. Ganga Ram had an axe, Chhoga had a Ballam and Bholam Ram had a lathi in his hand. Apart from these accused persons, the complainant also named Prabhu Ram, Bhalla and Jora.

According to the version given in the First Information Report, Movana Ram caught hold of the deceased from hands, Ganga Ram gave axe blows on his head and thereafter, others gave club injuries. Rest of them have been implicated by a omnibus statement. While they arrived, the accused had made their escape good. When they wanted to take the deceased to the hospital, he died on the way.

On the basis of such information, F.I.R. was registered and investigation was conducted and after investigation, chargesheet was filed against Ganga Ram, Chhoga Ram and Bhola Ram. The other four accused persons were not charge-sheeted. An application under Section 319 Cr.P.C was moved before the trial court regarding implication of these four accused persons. That application was ordered to decided subsequently at the time of final decision of the trial.

The trial court framed charges under Section 302 IPC read with Section 34 IPC against three accused persons which they denied and

claimed trial. At the trial, 13 witnesses were examined by the prosecution and 22 documents were exhibited. The accused were examined under Section 313 Cr.P.C. Eight documents were exhibited in defence. The trial court considered that at the trial, prosecution produced PW/1 Ram Karan, PW/2 Bhinya Ram, PW/5 Tejnath, PW/6 Nand Singh as eye-witnesses and Nenu Ram, PW/3 and Kistoor PW/7 as witnesses res geste. The trial court has noticed that except PW/1 Ram Karan and PW/2 Bhinya Ram, other witnesses have not supported the prosecution story and have not said anything straight against the accused at the trial.

The case of the prosecution was based on testimony of PW/1 Ram Karan and PW/2 Bhinya Ram as eye-witnesses. The trial court accepted the defence story that these two witnesses are not fully reliable witnesses and they are partly reliable witnesses. The story given by these two witnesses has not been corroborated by medical evidence inasmuch as PW/2 Bhinya Ram has not given out the story in conformity with the defence version D/1 and D/2. According to the trial court, it was stated that the deceased was inflicted an axe blow on the head and a sharp edged weapon injury on the stomach but both these injuries were not found in the medical testimony. Then the trial court discussed the observance of blood stains at the scene of occurrence which was at three places and that is also not deposed by the witnesses . The trial court noticed that PW/3 Sita Ram, PW/4 Nanu Ram, PW/5 Tejnath, PW/6 Nand Singh, PW/7 Kistoor and

PW/8 Arjun Ram are not the witnesses who are worthy consideration. The whole case was based on the testimony of PW/1 Ram Karan and PW/2 Bhinya Ram. They being only held to be reliable, corroboration was sought which was not available on record and thus, un-corroborated testimony of these two witnesses was not considered worthy enough to be believed. So much so, that PW/2 Bhinya Ram having contradicted from the exhibits D/1 and D/2, his statement was not considered worthy of reliance. They were the closest relatives of the deceased, therefore, their testimony was critically scrutinized. The medical evidence was discussed in context with the statement made by PW/1 Ram Karan and PW/2 Bhinya Ram and then the testimony of PW/11 Dr. Choudhary was discussed with the aid of postmortem report Ex.P/15 wherein, no injury by sharp edged weapon was found the head of the deceased. The trial Court noticed that neither there was any axe injury on the head nor a ballam injury on the abdomen. The two witnesses have stated that they were going to bus stand to receive guests. Statements of both of them were distinct as to who were the persons they went to receive. Once says Tehsildar, another says the maternal uncle. Thus, there being no reason for these witnesses to be there because they were the chance witnesses. The reason given by them that they were to receive guest and both of them having given two different versions as to who were the guests, their testimony was not accepted by the trial court. Having found both the witnesses PW/1 Ram Karan and PW/2 Bhinya Ram

un-reliable, the implication of the prosecution to implicate four other accused persons under Section 319 Cr.P.C. was also dismissed by the trial court and ultimately, the trial court acquitted the accused respondents.

Challenging the acquittal, the learned counsel for the State submitted that it was a case wherein, the eye-witnesses were not there. A man had died. The eye-witnesses have stated their reason of presence on the scene of occurrence as it was a bus stand and they had gone to receive a guest. There was a reason for these witnesses to be present with the deceased. The testimony of PW/1 Ram Karan and PW/2 Bhinya Ram though have some minor contradictions in the police statement, yet the trial court has wrongly discarded their testimony and have convicted the accused persons. Therefore, the prosecution version was liable to be accepted and the accused were entitled to be convicted.

Learned counsel for the accused per contra contested that witness PW/2 Bhinya Ram in police statement Exhibit D/1 has stated that he was told by his mother and elder brother Surja Ram to go to bus stand to escort his father. At that time, his father and his elder brother were sitting at the bus stand on a platform. Thus, the story in the First Information Report that two witnesses were following the deceased was the version given in the first case. According to his police version, when he reached the bus stand, his father started from the bus stand to village which was not the case in the First Information Report. The case in the First Information

Report was that while his father was proceeding, PW/1 Ram Karan and PW/2 Bhinya Ram were following. Thus, the entire texture of the prosecution story was busted by this witness. In Ex./2 further statement of this witness, the witness has stated that he was following his father and in that statement he had only named Ganga Ram, Chokha Ram and Bhola Ram. Other four accused persons were not named. He has stated that Ganga Ram gave an axe blow on the leg. This witness has not deposed what he has deposed before the police. Therefore, Ram Karan and Bhinya Ram are not the reliable witnesses and they are wholly un-reliable. Other witnesses produced by the prosecution have also not supported the prosecution case which is the admitted position because they turned hostile. The cased rested squarely on their testimony and in such circumstances, their version being not corroborated by their earlier statement and there being an attempt on the part of the prosecution witnesses to change the texture of the prosecution by implicating more accused persons than those who were involved and other persons having turned hostile, the trial court has rightly acquitted the accused respondents. Therefore, it cannot be said that the findings of the trial court is in any way perverse.

We have heard the rival submissions and have given our thoughtful consideration. The trial court has made critical analysis of the witnesses. Out of the entire prosecution story, only two witnesses tried to support the prosecution case. The statement of PW/2 when confronted

with the police statement Ex.D/1 and Ex.D/2 which were the statements recorded at two stages of investigation have materially altered. The witness who alters the prosecution story and tries to construct a new version, is hardly a witness who can be considered to be worthy of reliance and therefore, the testimony of PW/2 Bhinya Ram deserves to be discarded from consideration. When one of the witnesses who supported the presence of another witness Ram Karan is found to be one who is discarded then, it can be seen that un-corroborated testimony of Ram Karan is also of no substance because his version as given in the Court is not in conformity with the medical report. There being no hurt by a sharp edged weapon noticed by the doctor, it cannot be said that these witnesses were the witnesses of occurrence and if they were not the witnesses of occurrence and have falsified their stand by implicating the accused persons by assigning such weapons which were not used in the assault, their testimony looses significance. Once their testimony looses significance, then it cannot be said that the trial court was not right in discarding their testimony and if the testimony of these witnesses have been discarded after discussing the same in detail, then the findings of the trial court cannot be found fault with.

The scene of occurrence has been changed, manner of occurrence has been changed, weapons have been falsely depicted, the reason for presence on the scene of occurrence has also been altered. With

so many infirmities, it is not possible to convert the findings of acquittal into findings of conviction in a State appeal. In that view of the matter, we find it difficult to dis-agree with the findings of the trial court and hold that the findings arrived at by the trial court are in consonance with the record.

Accordingly, the appeal of the State is held merit less and the same is hereby dismissed.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

bjsh